admittedly overlooked this mandatory disqualification. The case must, therefore, be remitted to him for him to give the defendant an opportunity, if he can, to advance any reasons which the Magistrate, in his discretion, may consider sufficient to justify him not imposing what would otherwise be the compulsory period of disqualification on a conviction. In considering what are, or are not, special reasons, the learned Magistrate would do well to consider the cases of:— *Public Prosecutor v. M. Karthiah* [1]; *Public Prosecutor v. Mohamed Jee* [2]; and *In re Antharanik Simon* [3].

PUBLIC PROSECUTOR v. TAN CHENG LENG

[A. Cr. J. (Hepworth J.) July 2, 1959]

[Muar — Criminal Appeal No. 10 of 1959]

Rubber Dealers Enactment (Johore Enactment No. 65), s.12 — "Day by day" entry of particulars of purchase of rubber — Meaning of "day by day."

Section 12(i)(a) of the Rubber Dealers Enactment reads: "Every licensee...shall keep books of account in which shall be entered, day by day, in English or romanised Malay, the following particulars concerning all purchases, deliveries, sales, shipments and other consignments of rubber: — (a) the date of purchase, delivery sale or consignment;....." In this case the respondent was charged with failing to comply with the provisions of that section, in that he failed to enter day by day particulars of purchase of rubber in his account book. The facts were that on October 29, 1958 the respondent purchased 11,200 lbs. of rubber, a temporary receipt in respect of which was received at his shop at about 5.45 p.m. on that date. On the following morning at 5.30 a.m. a Police Inspector visiting the respondent's shop found that there had been no entry made in his account book of this purchase.

Held: the particulars specified in section 12(i)(a) give the clue as to the meaning intended by the legislature when they used the phrase "day by day". As para. (a) of that section requires, amongst other things, the date of the purchase to be stated, the date of any purchase will appear in the account book even if the entry is made next day or a week later. If it was the intention that entries of purchase could be made at any time and not necessarily on the day upon which a particular purchase took place, then the words "day by day" are superfluous and redundant because the date of every purchase will always appear by virtue of the requirements of para. (a). If however the words "day by day" are read as meaning that the particulars of a purchase must be entered on the date upon which the purchase takes place, which they can be read as meaning without doing any violence to the phrase, then the words are not redundant as, read with para. (a), they mean that the particulars of the purchase must be entered on the date upon which the purchase takes place and those particulars must contain amongst other things the date of the purchase.

MAGISTRATE'S CRIMINAL APPEAL.

Pawan Ahmad (Federal Counsel) for the appellant.

H. B. Ball for the respondent.

Hepworth J.: This was an appeal by the Deputy Public Prosecutor against the decision of the Magistrate, Segamat, that the prosecution had not made out a *prima facie* case when the Respondent was charged with failing to comply with the provisions of section 12 of the Rubber Dealers Enactment (Johore Enactment No. 65), an offence under section 18 of the said Enactment, in that he failed to enter day by day particulars of purchases of rubber in his account book.

The facts of the case were not in dispute. The Respondent purchased 11,200 lbs. of rubber on the 29th October, 1958, a temporary receipt in respect of which was received at the Respondent's shop at about 5.45 p.m. on that date. On visiting the Respondent's shop at 5.30 a.m. the next morning, the 30th October, 1958, a police Inspector found that there had been no entry made in the Respondent's account book of this purchase of 11,200 lbs. of rubber. The Magistrate stated that he did "not think that it is the strict requirement of the law in respect of the words 'day by day' that all purchases, sales, shipments and other consignments of rubber must be entered in the books before midnight of the day on which they occurred but all such purchases or sales, etc. of rubber made on a certain day shall be entered and shown in the books as for that day alone and not otherwise."

The learned Deputy Public Prosecutor contended that the Magistrate erred in law in reading the words "day by day" in section 12(i) of the Rubber Dealers Enactment not to mean that entries of particulars required under the said section must be made on the day the, in this case, purchase was made.

Neither the learned Deputy Public Prosecutor nor learned Council for the Respondent was able to quote any authority on the meaning of the words "day by day" in section 12(i), and we had to be content with the definition of the phrase "day by day" in the Shorter Oxford English Dictionary, 2nd Edn., Vol. I, of "Daily, every day in its turn".

Section 12(i) reads:—

"Every licensee mentioned in section 10 shall keep books of account in which shall be entered, day by day, in English or romanised Malay, the following particulars concerning all purchases, deliveries, sales, shipments and other consignments of rubber:

and then follow the particulars required of which I propose to refer to only one which is:—

"(a) the date of purchase, delivery, sale or consignment;".

It seems to me that the particulars specified in paragraph (a) of section 12(i) give the clue as to the meaning intended by the legislature when they used the phrase "day by day". As paragraph (a) of section 12(i) requires, amongst other things, the date of the purchase to be stated, the date of any purchase will appear in the account book even if the entry is made next day or a week later. If it was the intention that entries of purchases could be made at any time and not necessarily on the day upon which a particular purchase took place, then the words "day by day" are superfluous and redundant because the date of every purchase will always appear by virtue of the requirements of paragraph (a). If however the words "day by day"

are read as meaning that the particulars of a purchase must be entered on the date upon which the purchase takes place, which they can be read as meaning without doing any violence to the phrase, then the words are not redundant as, read with paragraph (a), they mean that the particulars of the purchase must be entered on the date upon which the purchase takes place and those particulars must contain amongst other things the date of the purchase.

I think therefore that the Magistrate was wrong in holding as he did, and as on what I consider to be the correct interpretation the prosecution had made out a *prima facie* case, I allow the appeal and quash the order of acquittal and discharge and direct that the case be returned to the Magistrate for him to call upon the Respondent for his defence.

Appeal allowed.

Solicitors: *Allen & Gledhill.*

PONNUSAMY & ANOR. v. NATHU RAM

[O. C. J. (Good J.) May 13, 1959]

[Ipoh — Civil Suit No. 243 of 1956]

Practice and Procedure — Amendment of Statement of Defence — Leave — Application closely connected with unsuccessful attempt to introduce evidence — Principles to be considered.

Evidence Ordinance, 1950, ss.91 and 92 proviso (b) — Estoppel.

In dealing with an application to amend the pleadings the Court should consider the materiality and the effectiveness of the amendment, and it is a well-established practice not to allow an amendment where it appears that such an amendment would be useless. The Court should look at the probable consequences of the amendment, and if the amendment would be ineffectual then it ought not to be allowed to be made.

If a party is precluded from setting up a certain plea by reason of the fact that he is not permitted by the law of evidence to give evidence in support of it, he should not be permitted to include that plea in his pleadings.

Cases referred to:—

(1) *Lawrence* v. *Lord Norreys* (1888) 39 Ch. D. 213, 215.

(2) *Morel Bros. & Co. Ltd.* v. *The Earl of Westmoreland* [1903] 1 K.B. 77.

(3) *Wood* v. *The Earl of Durham* (1888) 21 Q.B.D. 501.

APPLICATION TO AMEND PLEADINGS.

B. K. Das for the plaintiffs.

N. Sharma for the defendant.

Good J. delivering oral ruling: An application has been made by Counsel for the defendant for leave to amend the Statement of Defence by the addition of the following paragraph:—

"R. M. N. Naina deceased represented to the Defendant and caused him to believe that the Memorandum of Transfer copy of which is annexed to the Plaint and marked 'P. 1' therein was to be taken by him only as a security and the Defendant acting upon such belief and representation signed the said Memorandum of Transfer. The said deceased throughout his life treated the said Memorandum only as a security and the Plaintiffs are estopped from denying that it was a security."

This application is in the nature of a tactical manoeuvre — I use the expression in no derogatory or critical sense — designed to rescue the defendant from the predicament into which he has fallen by reason of my ruling this morning on the admissibility of certain evidence. When I gave that ruling, I did not give my reasons for it. I said that they would be given later, and it is perhaps unfortunate that I did not reserve the ruling in the light of what has transpired since because it would be more convenient in dealing with the present application if my reasons for holding that evidence to be inadmissible were on record. However, I felt that as I had made up my mind on the point it was better that it should be decided and the decision announced there and then; but in fairness to the parties and to Counsel, who both went to a considerable amount of trouble to provide me with a fairly large number of authorities, I considered that in the event of a possible appeal it would be right that a written judgment, setting out and considering the authorities cited to me, should be made available.

Now, the present application is connected — and I think closely connected — with the unsuccessful attempt to introduce certain evidence as to the Memorandum of Transfer (Exhibit P. 1). The defendant's case in brief is, or the case which he seeks to make is, that things are not what they seem to be: that that document Exhibit P. 1 though expresed to be a transfer of land for consideration — in other words, a straightforward transaction of sale — is in fact a security for a loan. I ruled that he could not give oral evidence of any arrangement that he may have come to with the deceased, Naina, as to which the Memorandum of Transfer is silent and which, in my view, if allowed, would be inconsistent with the terms of the Memorandum itself. "Well," he says, "if I cannot get the evidence in in that way, I will try to get it in by another door." And he proposes to do that by amending his defence to include an averment of a representation which he alleges was made to him by the deceased when he signed the Memorandum of Transfer. In my view, the effect of that — if the amendment was allowed and evidence was given in support of the averment contained in it — would be to admit oral evidence of a separate oral agreement as to a matter on which the Memorandum of Transfer is silent and, in my view — also for the same reason which caused me to give my ruling this morning — I would regard such a representation as alleged as a separate oral agreement which is inconsistent with the terms of the Memorandum. Therefore it appears to me that that evidence is caught by section 91 of the Evidence Ordinance and is not rescued by proviso (b) to section 92. The second part of the proposed amendment to the effect that the plaintiffs are estopped from denying that the Memorandum of Transfer was